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ABSTRACT

This is one of four papers prepared by the Legal Standards Project. It is concerned with whether the legal requirements for state administration of Title I are set forth with adequate clarity and sufficiency and whether the legal framework adequately interrelates different functions state educational agencies must perform in the process of administering Title I. First, the paper focuses on the legal framework for state administration, not the process or efficiency of state administration. Second, with respect to the analysis of the states' legal framework, a content analysis of state policies and interpretations from ten states is included in the study. It is concluded that state legal frameworks for state administration of Title I often reflect the lack of interrelatedness, clarity, and sufficiency found in the federal legal framework for state administration. An indepth analysis of the clarity, sufficiency, and interrelatedness of each major function state educational agencies are required to perform in administering Title I is included. Among these functions are the following: approval of local educational agencies' applications, rule making and interpretation, technical assistance, monitoring, and grant distribution. (Author/AM)

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EXECUTIVE

SUMMARY

AN ANALYSIS OF THE LEGAL FRAMEWORK FOR STATE ADMINISTRATION OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965

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PREFACE

This document is a summary of one of four major papers prepared by the Legal Standards Project during a two-year study of the legal framework for Title I of the Elementary and Secondary Education Act. The National Institute of Education supported this study as one part of its response to a Congressional mandate to conduct a comprehensive study of compensatory education programs and to report its findings and recommendations to Congress.

This summary is drawn from a paper entitled An Analysis of the Legal Requirements for State Administration of Title I of the Elementary and Secondary Education Act of 1965. The structure and organization of the summary are similar to that of the source paper. As an aid to readers, the corresponding pages of the source paper are included in the summary at several key points.

The summary presented here attempts to capture the essence of the source paper (which is approximately 500 pages in length), but it necessarily omits much of the analysis and the technical legal discussion. Readers of this summary should consult the source paper for a fuller explanation of the legal reasoning that undergirds the findings, conclusions and recommendations summarized in this document.

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PART I

INTRODUCTION AND OVERVIEW OF THE PAPER

(See pp. 1-47 of the paper.)

A. Purpose of the Paper

On April 11, 1965, Congress enacted the Elementary and Secondary Education Act 1/ (ESEA) which was designed to expand educational opportunities in the nation's elementary and secondary schools. "Title I" of that Act provides financial assistance to local educational agencies (LEAs) to meet the special educational needs of educationally deprived children residing in areas having high concentrations of children from low-income families.

Congress, in the Education Amendments of 1974, extended the Title I program through June 30, 1978. The 1974 Amendments also directed the National Institute of Education (NIE) to undertake a comprehensive study of compensatory education programs, including Title I, and to report the findings to Congress with recommendations concerning the future of federally funded compensatory and remedial education programs.

The NIE study has several research components. One of them is an examination of the administration of Title I by the states. Central to the study of program administration and to any conclusions concerning the future of federal compensatory education efforts is an understanding of the legal framework of Title I. Since this legal framework includes program requirements which specify how Title I programs are to be designed and how federal funds are to be used by LEAs which receive Title I funds, it implicitly defines the objectives of state administration of Title I. The legal framework also includes specific functions which State Education Agencies (SEAs) and the United States Office of Education (OE) are to perform in the administration of Title I. 2/ The

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1/ P. L. 89-10 (20 U.S.C. 241a et. seq.).

2/ The legal framework for state administration of Title I also includes certain provisions of the General Education Provisons Act (GEPA) (20 U.S.C. 1221 et seq.) and the GEPA regulations (45 C.F.R. Part 100b,. State Administered Programs (1976)).

National Institute of Education has contracted with the Lawyers' Committee for Civil Rights Under Law to describe and analyze the legal framework of Title I and state compensatory education programs. The "Compensatory Education Study--Survey of Legal Standards" has been conducted by the Legal Standards Project at the Lawyers' Committee.

In general, the study's basic research objective is to determine what clarifications, additions, or deletions are needed in the legal framework to improve program administration.

More specifically, the paper, one of four papers prepared by the Legal Standards Project, 3 / is concerned with whether the legal requirements for state administration of Title I are set forth with adequate clarity and sufficiency and whether the legal framework adequately interrelates different functions SEAs must perform in the process of administering Title I.

B. Limitations of the Paper

There are two limitations of the paper which should be mentioned in this summary. Additional limitations of the study

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3 / The other papers prepared as part of the study by the Legal Standards Project are: (1) An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965 (September, 1977); (2) An Introductory Overview Concerning the Basis For and Clarity and Restrictiveness of Program Requirements Applicable to Local School Districts Applying For Grants Under Title I, ESEA (September 1977); and (3) A Description and Analysis of the Relationships Between Title I and Selected State Compensatory Education Programs (September 1977).

are discussed in the paper.

First, the paper focuses on the legal framework for state administration, not the process or efficiency of state administration. Consequently the paper does not focus on purely administrative issues, e.g., organization and staffing of the Title I component of SEAs.

Second, with respect to the analysis of the states' legal framework, it is important to note that the paper focuses on a content analysis of state policies and interpretations from ten states included in the study. 4 / Whether a particular state policy reflects actual practice is beyond the scope of the analysis.

C. Organization of the Paper

The paper is divided into three parts. Part I is a general introduction and overview of the paper. Part II includes the Project's general findings, conclusions, and recommendations concerning the interrelationships between and among SEA functions and the clarity and sufficiency of the legal requirements for state administration of Title I. In general, the focus of Part II is on the efficacy of the existing federal legal framework. Although Part II contains illustrative examples from different functional areas, it does not focus on an in-depth analysis of any particular SEA function.

Part III of the paper includes an in-depth analysis of each of the major SEA functions. 5 / This part is divided

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4 / Under the terms of the contract, the names of states included in the study are not disclosed in the paper.

5 / The major SEA functions analyzed in the paper are (1) application approval; (2) rule making and interpretation; (3) technical assistance; (4) monitoring; (5) grant distribution; (6) enforcement; (7) financial management; (8) evaluation and (9) reporting to the federal government/ complaint resolution.

into chapters. Each chapter describes the basic federal and state legal frameworks pertaining to the relevant SEA function(s) under discussion and then analyzes the clarity and sufficiency of the legal framework for the function and the interrelationship of that function to other functions. Each chapter includes recommendations for specific additions, deletions or modifications to the federal legal framework. These recommendations are designed to improve the federal legal framework for state administration of Title I.

PART II

GENERAL FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONCERNING THE INTERRELATEDNESS, CLARITY, AND SUFFICIENCY OF THE LEGAL FRAMEWORK FOR STATE ADMINISTRATION OF TITLE I

(See pp. 48-101 of the paper.)

A. Interrelatedness of SEA Functions

The Legal Standards Project concluded that, although the federal legal framework for state administration contains the basic requirements for an interrelated system of SEA functions, the interrelationships among SEA functions are not always fully developed in the federal legal framework. For example, in practice, application approval at the state level should interrelate with several other SEA functions, e.g., monitoring, auditing, enforcement, evaluation and rule making.

With respect to the connection between application approval and monitoring, auditing, and enforcement, the SEA has an opportunity, before approving the application, to review monitoring and audit reports concerning the LEA submitting the application. If these reports indicate that the LEA has not corrected programmatic violations or has not made arrangements to reimburse Title I misexpenditures, then the SEA has an opportunity to require that the LEA do so before the SEA approves the application. However, the federal legal framework does not indicate that SEAs should take such steps. Thus, it is possible for SEAs to approve applicatons from LEAs which may not have corrected past violations or which may not have paid back misspent funds.

Evaluation is also related to application approval because SEAs can consider the results of past LEA evaluations during the application review process. The extent to which SEAs do this can influence SEA decisions concerning the unmodified continuation of projects that evaluations suggest are not meeting their objectives. Yet the federal legal framework does not clarify the relationship between SEA application approval and LEA evaluations.

SEA rulemaking is also related to application approval because OE has indicated in correspondence and outdated handbooks that SEAs can promulgate additional criteria, not inconsistent with Title I, for the approval of LEA applications. Such additional criteria can emphasize increased program quality rather than minimal compliance with LEA program requirements or can emphasize independent state objectives, e.g., a focus on early childhood education. However, the regulations are silent about the extent to which SEAs may do this.

Although the federal legal framework contains the basic requirements for an interrelated system of SEA functions, we have concluded that the federal legal framework does not fully develop the connections between application approval and certain other SEA functions. Similar conclusions were reached about the interrelationships between other SEA functions, e.g., monitoring and auditing; enforcement and monitoring; audit resolution and enforcement.

B. Clarity and Sufficiency of SEA Functions

The Legal Standards Project generally concluded that certain SEA responsibilities are not set forth with adequate clarity and sufficiency to prevent widely varying state interpretations. These conclusions can be divided into three categories: (1) implied SEA authority in the federal legal framework has produced widely varying SEA policies; (2) the federal legal framework does not always adequately clarify the scope of some SEA functions; and (3) the federal legal framework does not always set forth sufficient standards for certain aspects of some SEA functions.

Implied authority in the federal legal framework has resulted in widely varying SEA policies in such areas as rule making, enforcement, withholding or suspension of funds, and recoupment of misspent funds.

Several SEAs indicated that if OE wanted them to perform a particular function, then the regulations should clearly and expressly reflect the requirement. One state Title I Director stated that

> It is difficult to administer any federal program, especially Title I. LEAs are constantly saying to us, "Whose side are you on?" When there is an express statement of a requirement in the regulations, we can point to it and say that we are only complying with federal laws. However, where our authority is not clear, we are often unable to do anything even though we think Title I requires it. If OE wants us to do something they should come right out and say so clearly in the regulations.

The lack of clarity in the scope of some SEA functions involved such areas as the scope of SEA rule making and auditing. In the area of rule making, we found that some SEAs have developed state policies which unnecessarily restrict an LEA's program design options. In the area of auditing, we found that several SEAs are uncertain about the extent to which audits should be compliance, as well as fiscal, audits.

The lack of standards for some aspects of SEA functions was especially apparent in the area of monitoring, auditing, and audit resolution. This had led to widely varying SEA monitoring, auditing, and audit resolution policies.

C. The State Legal Frameworks

In general, we have concluded that state legal frameworks for state administration of Title I often reflect the lack of interrelatedness, clarity and sufficiency found in the federal legal framework for state administration. In addition, we have concluded that the state legal framework for state administration of Title I must be viewed in the context of intergovernmental relationships between HEW/OE and SEAs and between SEAs and LEAs. Two general findings led to this conclusion. First, the content of the state legal framework in several SEAs included in the study appears to have been influenced by OE Review Team reports and HEW Audits Agency reports. Second,

the content of the state legal framework in several SEAs appears to have been influenced by a tradition of LEA autonomy and local control of education.

We have also concluded that the state legal frameworks vary widely in quality and comprehensiveness from state to state and from function to function. For example, in many of the states not all the SEA functions and/or all aspects of a particular SEA function were interpreted. Thus, one state which developed comprehensive policies and procedures explaining application approval did not develop comprehensive policies or procedures for audit resolution or complaint resolution. A second state developed comprehensive policies and procedures for monitoring and application approval, but virtually no state policies or procedures for enforcement. A third state developed a comprehensive audit resolution policy. Most other states did not have written Title I audit resolution policies.

Furthermore, the Legal Standards Project has concluded, based on the review and analysis of state legal frameworks for state administration, that some SEAs may not be in full compliance with all the legal requirements for state administration. This general conclusion is based on the content of the state legal framework, not on a compliance review of state practices. For example, with respect to SEA compliance with the legal requirements for application approval, we found, after analyzing application forms, checklists, and procedures, that some SEAs may be approving applications that do not meet each of the Title I requirements. In general, we found that some states use application forms that do require the LEA to submit any information about certain LEA program requirements about which the SEA is required by statute to make a determination before approving the application.

D. Recommendations Concerning the Federal Legal Framework

Our general findings and conclusions about the federal legal framework focused on its interrelatedness, clarity, and sufficiency.

With respect to the interrelatedness of the requirements for state administration of Title I, we recommend generally that OE make such amendments to the federal regulations as may be necessary to explain clearly how different SEA functions relate to one another and how this interrelatedness should be reflected in SEA administration of Title I.

With respect to the clarity and sufficiency of the legal framework for state administration of Title I, we recommend generally that (1) to the extent OE wishes an SEA to perform a function, it provide clear express authority, rather than implied authority, for that function; (2) where the scope of an aspect of a function is not clear, OE clarify it, and (3) where minimum standards are not set forth for an aspect of a function, OE provide them.

In addition, we propose three major recommendations concerning the United States Office of Education's administration of Title I.

First, we recommend that, where appropriate for SEA administration, OE include, under substantive requirements set forth in regulations, illustrative examples of the application of requirements to commonly occurring situations. 6 / This technique is commonly used by other agencies for clarifying complex requirements. 7 /

Second, a separate section entitled "interpretations," should be included in the regulations. 8 / Thus, whenever OE issues an official interpretation of a requirement concerning state administration, that interpretation could easily be

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6 / Areas where this may be particularly appropriate include rule making and enforcement, e.g., audit resolution, withholding, etc.

7 / See e.g., regulations published by the Internal Revenue Service in Title 26 of the Code of Federal Regulations.

8 / Section 431 of the General Education Provisions Act requires, among other things, that all "interpretations" be published in the Federal Register. In addition, Section 431 of the GEPA Statute requires that OE treat "interpretations" in the same manner as it treats substantive regulations with respect to publication in the Federal Register of a notice of proposed rule making, comment period, republication and submission to Congress.

We recommend that Section 431 of GEPA be amended to require that OE "interpretations" simply be published in the Federal Register. OE should not be required to first publish their interpretations in proposed form subject to comments, republication and submission to Congress since, interpretations, unlike substantive rules, do not have the "full force and effect of law." Moreover, application

located in the regulations.

It should be noted that we do not recommend that the language of the existing regulations be totally discarded and less legally-based language substituted. The language of many of the regulations has been in existence for approximately eight years. Over time, most agencies have become familiar with these terms, although they may not always understand their precise implications or application. It is our opinion that less dissonance and more clarity would result from explaining the operative definitions, concepts, and standards set forth in present regulations than from totally revising the phraseology. Of course overly complex sentences in present regulations should be simplified. On several occasions such recommendations are made in our paper. We submit, however, that a complete revision would not be productive and would likely result in greater confusion than clarification.

Finally, we recommend that Congress require OE to prepare a policy manual for use by OE staff, HEWAA staff, SEAs, LEAs, and parents. The precedent for the development of a policy manual is firmly established within the federal government.

The manual should include, at a minimum (1) quotations of relevant sections of the Title I and GEPA statutes; (2) quotations of relevant regulations appearing in the Code of Federal Regulations, or the Federal Register; (3) explanations of the purpose of each requirement, with relevant references to the legislative history; (4) summaries of OE responses to

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(footnote continued from previous page)

of burdensome procedures to interpretations discourages rather than encourages interpretation by OE when issues need clarification. Our recommendation that OE be required simply to publish its "interpretations" in the Federal Register and not follow the procedure applicable to other substantive rules is not exceptional in any sense of the word. OE "interpretations" would then be subject to the same procedures most other Federal agencies now follow under sections 552 and 553 of the Administrative Procedures Act (5 U.S.C. 552, 553).

SEA requests for interpretations, including examples of actual applications of the standards and operative definitions set forth in the regulations; (5) summaries of final decisions rendered by the HEW Audit Hearing Board; (6) final determinations made by OE concerning audits closed without reaching the Hearing Board; and (7) summaries of relevant court decrees.

The policy manual should also specifically address LEA and SEA requirements. With respect to LEA program requirements, the manual should be organized by requirement, and by subject or topic areas, including, for example: "teacher aides", "support services", "pull-out programs", "in-class programs", "desegregation", "individualized instruction", "in-service training", "programs in open-space schools", etc.

The manual should also explain the various alternative program design models available to LEAs and, more importantly, describe the kinds of records they must maintain so as to leave a sufficient "audit trail" when and if the HEWAA undertakes an audit. This latter section should be prepared jointly by OE and the HEW Audit Agency.

The suggestion that a manual be developed is based on the premise that the LEA requirements are minimum process standards which do not restrict innovative programs which are (1) of sufficient size, scope, and quality to ensure a reasonable promise of success, and (2) are designed to best meet the special educational needs of the greatest number of educationally deprived children. We reviewed state manuals containing certain overly restrictive policies which had the effect of limiting LEA flexibility and went beyond the federal legal framework in their reach. Such a manual, developed by OE, would be consistent with Congressional intent not to interfere with the control of local school systems by the federal government; instead, it would help to eliminate the constraints on local discretion resulting from uncertainty about Title I requirements.

The OE correspondence we reviewed strongly supports the feasibility of developing a manual that facilitates innovation and creativity rather than discouraging it.

With respect to SEA functions, we recommend that the manual contain a section on SEA administrative requirements organized by functions. We further recommend that this section contain model instruments and procedures for different SEA functions. For example, it should contain a model application, a model application review checklist, a model monitoring instrument, model audit resolution procedures, and model procedures for interrelating SEA functions.

With respect to restrictive SEA criteria or interpretations based on educational policy, we recommend that the Title I regulations be amended to clarify the extent to which SEAs may base restrictive rules or interpretations on matters of educational policy not inconsistent with Title I, e.g., an SEA decision to support only K-3 programs or projects. The regulations should include examples of acceptable restrictive policies or rules based on educational policy and should further clarify the authority of the SEA to exercise such discretion.

PART III

ANALYSIS OF THE MAJOR REQUIREMENTS APPLICABLE TO STATE ADMINISTRATION OF TITLE I

(See pp. 102-492 of the paper.)

INTRODUCTION TO PART III

Part III of the paper includes an in-depth analysis of the clarity, sufficiency, and interrelatedness of each major function SEAs are required to perform in administering Title I. This part includes nine chapters, each focusing on a particular SEA function or functions. Each chapter contains a description of the relevant sections of the existing federal legal framework, the legal frameworks developed by the states included in our survey, and the project's analysis concerning the efficacy of the existing federal legal framework, i.e., what additions, deletions, or clarifications are needed in order to improve the federal legal framework for state administration of Title I.

With respect to recommendations concerning particular SEA functions, it should be noted that many of these recommendations could be implemented through amendments to regulations. In such cases, we have generally recommended that regulations be amended to accomplish this. However, it is equally clear that some of these recommendations could be implemented through statutory amendments. It is possible that, after several years of experience with various amendments to the regulations, Congress may determine that statutory amendments are a more appropriate means of resolving certain issues that have not been fully clarified through regulations.

The detailed analysis of these requirements is presented in Part III of the paper in the following sequence:

Chapter 1: SEA Approval of LEA Applications

Chapter 2: SEA Rule Making and Interpretation

Chapter 3: Technical Assistance

Chapter 4: Monitoring

Chapter 5: Grant Distribution

Chapter 6: SEA Enforcement

Chapter 7: Financial Management

Chapter 8: Evaluation

Chapter 9: SEA Reporting to the Federal Government/ Complaint Resolution

Chapter 1

SEA APPROVAL OF LEA APPLICATIONS

(See pp. 104-170 of the paper.)

A. Overview of the Function

Under the Title I legal framework, the SEA must determine whether an application for financial assistance submitted by an LEA complies with program requirements set forth in the Title I legal framework.

B. Interrelatedness, Clarity and Sufficiency

The general requirement that SEAs must review and approve applications from LEAs is clear. Furthermore, it is clear that each such application must contain information about specific Title I requirements. However, it is not clear what constitutes minimum standards for the quality of information that must be included in the application for each Title I requirement.

Despite the clarity of the general requirement, we have concluded that some state interpretations of the requirement, as reflected in application forms, do not appear to enable some SEAs to determine that each LEA application meets each of the LEA program requirements. This is because some application forms do not solicit any information about a variety of LEA program requirements.

In addition, we found that the federal legal framework for SEA approval of LEA applications does not adequately interrelate application approval with other important SEA functions. 9 / Furthermore, the federal legal framework does not provide adequate guidance with respect to certain procedural issues related to application approval, e.g., the effective date of SEA approval; the revision or amendment of project applications or budgets; and SEA authority to set deadlines for submission of LEA applications.

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9 / See discussion pp. 4-5, supra.

C. Recommendations

We recommend that the Title I regulations be amended to (1) include minimum standards for each LEA program requirement about which the SEA must make a determination before approving a LEA application; 10 / (2) require OE to develop a model application to assist SEAs in designing their own; (3) require OE to develop a monitoring instrument to assess the legal sufficiency of applications designed by SEAs; and (4) require OE personnel to certify in writing that applications used by SEAs meet Title I requirements.

With respect to interrelatedness, we recommend that Title I regulations be amended to require SEAs to develop written procedures to insure that application approval at the state level is interrelated with other SEA functions, e.g., monitoring, auditing, evaluation, etc. Recommendations have also been made concerning the effective date of SEA approval; application and budget revisions or amendments; and SEA deadlines for the submission of LEA applications.

10/ Recommended minimum standards for LEA program requirements are set forth in another paper prepared for this project: An Analysis of the Basis for and Clarity and Restrictiveness of the Program Requirements Applicable to Local School Districts Applying for Grants Under Title I of the Elementary and Secondary Education Act of 1965. (September, 1977)

Chapter 2

SEA Rule Making and Interpretation

(See pp. 171-214 of the paper.)

A. Overview of the Function

Rule making involves the process by which SEA rules, regulations, guidelines, policies, and procedures, are formulated, issued, and amended or repealed. Interpretation includes both formal written or informal verbal clarifications of Title I requirements rendered to individual LEAs.

B. Interrelatedness, Clarity and Sufficiency

The regulations are somewhat unclear about the authority of SEAs to issue state Title I rules and regulations in areas other than parental involvement. Authority for SEA rule making can be implied from the regulations. In addition, OE has indicated in correspondence and now outdated handbooks that SEAs may issue State Title I rules and regulations which are not inconsistent with Title I.

Implied authority for SEA rule making has produced a situation where some states refrain from an active rule making role because of the lack of clarity in the regulations. Other SEAs have developed policies which impose additional criteria or standards, not inconsistent with Title I, for the approval of applications.

The regulations do not directly address the scope of SEA rule making. They are silent about the extent to which SEAs may develop rules or policies which might (a) legitimately encourage maximum flexibility by clarifying but not restricting LEA choices or (b) overly restrict program design options as a result of conscious policy choices or misinterpretations of the federal framework. Some SEAs have developed policies which restrict LEAs. Where this has happened it has usually been (a) as a reaction to a lack of clarity in the federal legal framework; (b) as protection against audit exceptions; or (c) as a matter of educational policy.

The interpretation function is not mentioned in the regulations. In general, SEAs appear to be spending more time on interpretation than would be necessary if OE had a regular system for disseminating to all SEAs OE interpretations given to a particular SEA.

C. Recommendations

We recommend that the Title I regulations governing SEA approval of LEA applications be amended (1) to authorize the SEA to promulgate additional criteria, not inconsistent with Title I, unless expressly restricted by federal regulation from promulgating additional criteria for a particular LEA program requirement; (2) to require SEAs to disseminate any such criteria to LEAs for their guidance; and (3) to authorize SEAs to apply any such criteria to the approval of LEA applications; and (4) to require OE, as part of its monitoring responsibilities, to review any such additional criteria and to render a written opinion as to their consistency with Title I requirements.

We further recommend that the the Title I regulations be amended to include with the express grant of authority for additional SEA criteria a definition of the scope of such authority, including the extent to which SEAs may impose additional or restrictive requirements or criteria on LEAs.

With respect to restrictive SEA policies influenced by the lack of clarity in the federal legal framework, we repeat our previous recommendation that the Title I regulations be amended to (1) require OE to establish minimum standards for each Title I program requirement and (2) include a separate section of the regulations for OE interpretations. This should help to remedy the problem of restrictive SEA rules and policies based on restrictive SEA interpretations of the federal legal framework. Where OE has interpreted a requirement, different state interpretations should not exist solely because states are unaware of the OE interpretation.

As for restrictive SEA criteria or requirements based on a reaction to past audit exceptions, we recommend that the Title I regulations be amended to require OE, if it has not already done so by previous interpretation, to clarify (1) various legal program design options and (2) the circumstances under which specific components may be included. This should help to correct the problem of restrictive state interpretations based on a fear of audit exceptions.

Chapter 3

Technical Assistance

(See pp. 215-237 of the paper.)

A. Overview of the Function

The Title I statute addresses the SEA technical assistance function in the context of a statutory provision governing the maximum amount of funds for state administration and technical assistance. The Commissioner is authorized to pay each state amounts equal to the amounts expended by it for the proper and efficient performance of its duties, "including technical assistance for the measurements and evaluations required" by the statute.

Similarly, the Title I regulations provide that the SEA shall advise the Commissioner of the amounts it needs for administration and technical assistance to LEAs, with respect to the measurement of educational achievement and evaluation programs.

Although the statute and the regulations appear to emphasize technical assistance for evaluation, the legislative history clearly indicates that Congress did not intend to limit SEA technical assistance to evaluation. The legislative history shows that SEA technical assistance should provide LEAs with expertise to improve the quality of Title I programs. The Senate Committee on Labor and Public Welfare stated in its 1970 report that

> As a rule, [LEAs] rely on the [SEAs] for expertise and guidance in meeting the requirements of the law. Since Title I makes funds available for state administration of the program, the [SEAs] can and should assist [LEAs] in planning, developing and evaluating Title I programs and projects. 11/

11/ S. Rep. No.91-634 U.S. Code Cong. and Adm. News, 2775 (1970).

B. Interrelatedness, Clarity and Sufficiency

The statute and regulations governing technical assistance are not sufficient. We found that the Title I statute and regulations do not reflect the full range of SEA technical assistance responsibilities. Instead, they emphasize SEA technical assistance for LEA evaluation purposes. OE's handbooks and program reviews and SEA policies reflect a broader concern. Rather than limit technical assistance to evaluation, it appears that SEAs provide it in a variety of areas and emphasize it at differing stages of Title I program planning and operation. The diversity in SEA technical assistance policies is perhaps attributable to sources in the informal legal framework that refer to the other purposes of technical assistance, as well as the differences in the particular needs and demands of LEAs.

With respect to information dissemination as technical assistance, we found that although the federal legal framework does not expressly require SEAs to disseminate specific kinds of information to LEAs, some SEAs have developed written information dissemination procedures. Other SEAs have not done so. Those SEAs which have done so regard information dissemination as a vital part of their technical assistance responsibilities.

C. Recommendations

We recommend that the Title I statute and regulations be amended to reflect the wide range of areas in which technical assistance may be provided, with special emphasis on improving the quality of management procedures, program planning, program content, evaluation, preparation for the following year's application, and program implementation.

We recommend that the Title I statute and regulations be amended to require SEAs to develop effective procedures for disseminating to LEAs (1) significant results of relevant educational research; (2) information about successful Title I projects; and (3) such other information as would assist LEAs in planning, developing and implementing Title I programs.

Chapter 4

Monitoring

(See pp. 238-275 of the paper.)

A. Overview of the Function

The GEPA statute requires that SEAs provide "proper and efficient administration" of Title I. The GEPA regulations require that SEAs "constantly monitor performance..." of Title I programs. The legislative history emphasizes the importance of monitoring. In 1969, the Senate Labor and Public Welfare Committee explained that

> The Committee wishes to express its deep concern about the necessity for stronger enforcement of Title I requirements by both federal and state agencies in monitoring the legitimate and effective use of Title I funds by local educational agencies. [Emphasis added.] 12/

In 1974, the House Education and Labor Committee, explained that

> The heart of the program is that [LEAs] must assess the special needs of their educationally deprived children and must formulate programs to meet those needs with the Title I assistance. [SEAs] review and approve the application submitted by local school districts and then monitor and evaluate their programs. [Emphasis added.] 13/

B. Interrelatedness, Clarity and Sufficiency

It is clear that SEAs must monitor Title I programs. However, neither the GEPA nor the Title I regulations contain minimum standards for SEA monitoring. Wide variations exist in

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12/ S. Rpt. No. 91-634, U.S. Code Cong., and Adm. News 2776 (1970).

13/ H. Rpt. No. 93-805, U.S. Code Cong., and Adm. News 4094 (1974).

SEA monitoring policies in such areas as the scope of monitoring, the frequency of on-site visits, on-site monitoring procedures, and the interrelationship of monitoring to auditing and enforcement. The monitoring instruments prepared by most SEAs included in our survey were generally insufficient to satisfy the GEPA monitoring provision that program activities meet the basic Title I requirements.

C. Recommendations

So that SEAs may clearly understand their Title I monitoring responsibilities, we recommend that the Title I regulations be amended to include a separate section on monitoring which includes minimum standards for SEA monitoring of Title I programs. We further recommend that such regulations reiterate the basic purposes of monitoring, explaining which activities SEAs must undertake to fulfill the requirement and which activities may be considered optional. SEAs must determine whether LEAs are complying with each major program requirement, that each Title I program is being implemented in accord with the program design set forth in the state approved application and that the overall quality of each Title I program is assessed.

In addition, we recommend that OE clarify through such regulations the scope of monitoring, the required frequency of monitoring, acceptable monitoring procedures, and the interrelationship between monitoring and auditing and enforcement.

Furthermore, we recommend that each SEA be required to develop a new OE certified monitoring instrument which must include all program requirements and which must be updated to reflect any changes in the requirements.

Chapter 5

Grant Distribution

(See pp. 276-302 of the paper.)

A. Overview of the Function

OE distributes aggregate grants to SEAs based upon a statutory formula and an 85 percent hold harmless provision. If necessary, the aggregate grant is ratably reduced. SEAs suballocate aggregate county grants for distribution to individual LEAs. The SEA is also responsible for reallocating unused Title I funds.

B. Interrelatedness, Clarity, and Sufficiency

The federal legal framework concerning both OE and SEA grant distribution standards is, for the most part, specific and precise. The statute sets out a step-by-step formula which must be followed. As a result, the grant distribution functions of both OE and the SEAs are susceptible to little, if any, interpretation or elaboration.

Where the statute has omitted specific standards in favor of OE promulgation of criteria or standards, OE has generally taken a detailed approach. Thus, the SEA distribution formula specified in regulations is also susceptible to little interpretation or elaboration, although under the regulations in effect during our interviews, the SEA could, for example, select the "best available data" for determining the number of low-income children in each LEA within the county. This discretion has largely been eliminated by the new regulations which specify data sources which must be used.

Given the detailed scope and clear intent of the legal framework, our survey and analysis uncovered only two areas which merit revision. These are the application of the 85 percent "hold harmless" provision, and the standards for the reallocation of unused funds.

The Title I language concerning hold harmless is not sufficiently clear. Title I requires an 85 percent floor, with a proportionate reduction from the allocations of "the remaining local educational agencies." The Title I statute would seem to require the redefinition of the quoted phrase to read "the remaining local educational agencies in the county," based on the current OE practice of county grants.

However, Congressional intent to distribute Title I funds to LEAs more equitably would seem to support a statewide approach.

Few states indicated difficulty with the reallocation procedures or standards. Nevertheless, state compliance with the federal standard--LEAs with the greatest need for additional funds in order to redress inequities and mitigate hardships caused by disparities between the Title I formula and actual needs--cannot be readily assessed. This is especially the case because of the lack of specificity in the "criteria" set out in the regulations.

C. Recommendations

We recommend that the Title I statute be amended to permit adjustments based on the hold harmless provision to be made from LEA allocations statewide. This would not only remedy the apparent technical inconsistencies in the statute, but would further the intent of Title I by permitting the distribution of grant funds to those LEAs where they are most needed.

With respect to reallocation, we recommend that OE adopt new regulations which do more than set out the language of the statute. These regulations should include more specific criteria and illustrative examples for guiding state reallocation decisions.

Chapter 6

SEA Enforcement

(See pp. 303-380 of the paper.)

A. Overview of the Function

Congress intended that Title I be a supplemental categorical aid program. Under the Title I legal framework, the SEA is required to enforce Title I requirements. SEA "enforcement" in its broadest sense means requiring compliance with Title I requirements through activities that could range from private negotiations to formal administrative hearings to the recoupment of misspent funds. If the state fails to perform its enforcement responsibilities in a manner that conforms to the requirements of Title I, then it may be acting contrary to law and may also be permitting LEAs to do the same. The consequences of failing to enforce may include costly audit exceptions; requests that illegal expenditures be repaid; adverse rulings by the Title I Audit Hearing Board; withholding of funds; or even litigation aimed at insuring lawful compliance with Title I requirements.

B. Interrelatedness, Clarity and Sufficiency

First, we have concluded that the federal legal framework for SEA enforcement is not organized to facilitate SEA enforcement, i.e., enforcement related provisions are scattered throughout the statutes and regulations and there is no separate and distinct section labeled "SEA enforcement". In addition, the nature and extent of SEA enforcement authority and available sanctions are not set forth clearly in the federal legal framework.

In general, the state legal framework for SEA enforcement appears to reflect these problems found in the federal legal framework. SEA uncertainty about the nature and scope of SEA enforcement authority has generally produced widely varying SEA enforcement policies.

Second, with respect to audit resolution procedures, we have concluded that most SEAs do not appear to have written procedures describing a "systematic method to assure timely and appropriate resolution of audit findings and recommendations."14/ We also found that the federal legal framework fails to provide any guidance or standards for such a "systematic method."

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14 / 45 C.F.R. §100b.301(i)(1976).

Third, with respect to SEA recoupment of misspent funds, e.g., reducing future payments by the amount of past misexpenditures, we have concluded that this is rarely done. We also found that the GEPA regulations which appear to provide implied SEA authority for this enforcement sanction, do not incorporate an HEW interpretation that the SEA recoup state and local funds in an amount equal to that misexpended.

Fourth, with respect to SEA authority for withholding or suspending funding to enforce Title I requirements, we found that the federal legal framework does not directly and expressly authorize SEAs to withhold or suspend funds to enforce Title I requirements. However, we also found that a reasonable basis exists in the GEPA statute for concluding that SEAs have implied authority to withhold or suspend Title I funds for enforcement purposes. The review of SEA written material and interviews with SEA Title I officials revealed that a wide variety of SEA policies exist with respect to SEA withholding and suspension.

Fifth, with respect to the relationship between monitoring and enforcement, we have concluded that the federal legal framework does not adequately address the relationship between monitoring and enforcement. We also found that different SEAs appear to interpret their monitoring and enforcement responsibilities differently because of this lack of clarity in the federal legal framework.

C. Recommendations

First, we recommend that the Title I regulations be amended to provide a separate section for SEA enforcement. This section should incorporate by reference the requirement that SEAs enforce Title I requirements and the enforcement related provisions and sanctions scattered throughout the federal legal framework.

Second, we recommend that the GEPA regulations be amended to require minimum standards for audit resolution procedures.

Third, we recommend that the GEPA regulations be amended to clarify SEA authority to recoup misspent funds.

Fourth, we recommend that the Title I regulations be amended to make express what is implicit in the GEPA statute, i.e., authority for SEAs to withhold or suspend funds. We have also recommended that SEAs be required to develop and disseminate procedures governing withholding and suspension of funding. We have concluded that express authority is necessary because of the ambiguous nature of the implied authority for SEA withholding and suspension and because of widely varying SEA interpretations of this implied authority.

Fifth, we recommend that the GEPA monitoring regulations be amended to impose certain SEA recordkeeping requirements that would have the effect of documenting what enforcement action was taken by a SEA when it discovered a Title I violation during an on-site monitoring visit.

Chapter 7

Financial Management

(See pp. 381-445 of the paper.)

A. Overview of the Function

The financial management "function" is a combination of several requirements imposed on SEAs to insure that Title I funds are used in a fiscally responsible manner to achieve the general purpose of Title I, i.e., to meet "the special educational needs of educationally deprived children...".

The ESEA Title I program directive system includes a variety of topics under the heading of financial management. Our review of the financial management "function" focused selectively on the major requirements for (a) fiscal controls and fund accountability, (b) recordkeeping and fiscal reporting, and (c) audits. Our analysis was primarily concerned with the requirements for auditing and with state interpretations of these requirements.

The GEPA statute requires SEAs and LEAs to keep certain records that will facilitate an effective audit. In addition, SEAs and LEAs must permit access for the purpose of audit and examination to any books, documents, papers, and records which are determined to be relevant or pertinent. The statute also requires such access until the expiration of five years after the completion of the project or undertaking.

The GEPA regulations require that the state agency's and a subgrantee's financial management system provide for audits to determine, at a minimum,

> the fiscal integrity of . . . financial transactions and reports and the compliance with applicable statutes, regulations, and terms and conditions . . . 15/

Such audits must be conducted with reasonable frequency, usually annually, but not less frequently than once every two years.

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15 / 45 C.F.R. §100b.301(h)(1975). The GEPA regulations also impose requirements concerning audit resolution. These are analyzed in the context of Chapter 6, SEA Enforcement.

B. Interrelatedness, Clarity, and Sufficiency

In general, auditing requirements are found in the GEPA statute and regulations rather than Title I. It is clear that the scope of audits must include fiscal and compliance considerations. However, the scope of the compliance aspect of auditing is not clear. The regulations contain no real standards about what constitutes the compliance aspect of an audit. For example, does "compliance" mean that an audit must determine whether LEA Title I projects comply with each Title I requirement? Does it mean that an auditor has complete discretion to determine which of the applicable requirements will be reviewed? Does it mean, in a practical sense an auditor should concentrate on the major program requirements imposed on LEAs? If so, which ones?

We found only a few SEAs that appear to conduct audits that meet the scope required by the regulations. Based on our review of state policies and interviews with SEA personnel, we have concluded that in several states only fiscal audits are conducted.

Auditing policies vary widely from state to state. We found that some SEAs do not appear to audit LEAs themselves, but that state law or policy in some states requires an annual audit of LEAs by an independent CPA or by another state office or official. In general, these annual audits appear to be fiscal audits that do not consider compliance. With two exceptions, SEA policies did not indicate that the findings of these annual audits are reviewed by the SEA.

We also found that two SEAs lack authority under state law to audit LEAs. In one state an elected state auditor conducts such audits and in the other, the state department of finance has authority under state law to conduct such audits.

Three other SEAs had authority to audit LEAs, but state law also required annual LEA audits by independent CPAs. Another SEA had authority to audit LEAs, but had a written policy that required LEAs to provide for an annual audit and submit the report to the SEA for review.

In addition, we found a general lack of Title I audit instructions for non-federal auditors. 16/ Furthermore, the regulations contain no reference to any auditing standards and are silent about providing audit information to parent advisory councils.

C. Recommendations

In an attempt to reconcile the different state auditing policies, we have recommended that the GEPA regulations be amended to set forth certain conditions under which audits could be conducted by other state offices or officials or by independent CPAs. These conditions are, in summary, that (1) comprehensive program-specific audit instructions be provided to all auditors; (2) such audits meet the scope requirement (fiscal and compliance); (3) the SEA has written policies requiring the findings of such audits to be submitted to and reviewed by the SEA within specified times; and (4) the SEA has certain written audit resolution procedures.

In view of the apparent problem with the required scope of auditing, we have recommended that the scope of "compliance" be clarified to provide that the compliance aspect of each Title I audit must, at a minimum, include a review of: (1) school attendance area eligibility and targeting; (2) eligibility and targeting of children; and (3) supplemental use of Title I funds and the prohibition concerning the use of Title I for general aid. We concluded that an audit of these areas was necessary because they concern the fundamental purposes of Title I. We have recommended that the HEW Audit Agency, with assistance from OE, develop, publish, and disseminate comprehensive Title I audit instructions that can be used by non-federal auditors.

In addition, we have recommended that the lack of audit standards in the Title I legal framework be addressed by incorporating by reference (in the GEPA regulations) the GAO audit standards issued under the signature of the Comptroller General, Standards for Audit of Governmental Organizations, Programs, Activities and Functions. Recommendations have also been made about the distribution of Title I sections of audit reports to the public and to parent advisory councils.

16/ The HEW Audit Agency has used "draft" audit instructions for federal auditors for several years.

Chapter 8

Evaluation

(See pp. 446-464 of the paper.)

A. Overview of the Function

SEAs are required to submit annual evaluation reports to OE. These reports must include the results of objective measurements from annual evaluations that Title I requires LEAs to conduct. The Education Amendments of 1974 also require SEAs to use evaluation models developed by OE. These models must include uniform procedures and criteria and must specify objective criteria, techniques, and methodology.

B. Interrelatedness, Clarity and Sufficiency

OE has not yet implemented the evaluation models mandated by statute in 1974. Consequently, the regulations are silent about SEA responsibilities concerning the evaluation models. The revised regulations do impose a deadline for SEA submission of the annual evaluation report to OE. However, the regulations do not prescribe minimum standards for the content of such reports.

C. Recommendations

OE may be planning to amend the Title I regulations to reflect the implementation of the evaluation models. However, we have not made any specific recommendations concerning the efficacy of the existing evaluation requirements in the federal legal framework because of (a) the specificity of extensive Congressional findings about evaluation set forth in the legislative history of the Education Amendments of 1974, (b) the limits of our expertise in this area and (c) the fact that the OE models have not yet been disseminated.

Chapter 9

SEA Reporting to the Federal Government/Complaint Resolution

(See pp. 465-492 of the paper.)

A. Overview of the Function

The purpose of the SEA reporting/complaint resolution function is to provide the Commissioner with data and information necessary to enable him to perform his duties under Title I. Among the major reports which SEAs are required to submit to the Commissioner are the following: (1) an annual SEA evaluation report; (2) comparability reports; (3) a report on the distribution of Title I funds among participating agencies; (4) a state performance report; (5) a financial status report regarding administrative and program expenditures; and (6) complaint resolution reports.

B. Interrelatedness, Clarity, and Sufficiency

Our analysis focused on complaint resolution because of our conclusion that, except for the annual SEA evaluation report,[17] other aspects of the federal legal framework for SEA reporting are sufficiently clear and are supplemented by standard OE reporting forms.

The Title I regulations in effect during the state interviews addressed complaint resolution in two ways. First, in the context of a reporting requirement, SEAs were required to submit complaint resolution reports and were responsible "in the first instance" for complaint resolution. Second, in the context of what a SEA was required to determine upon review of a LEA application, LEAs were required to develop "adequate procedures to insure prompt response to complaints and suggestions from parents and parent councils." The Title I regulations did not clarify the relationship between SEA and LEA complaint resolution responsibilities.

17/ The revised regulations do impose a deadline for submission of SEA evaluation reports to OE, but they do not specify minimum standards for the content of the report. See p. 29 supra, for a discussion of why no recommendation has been made about the annual SEA evaluation report.

The new Title I regulations deleted the express requirement for LEA complaint procedures; established certain minimum standards for SEA complaint resolution procedures; imposed more detailed complaint resolution reporting requirements on SEAs; and, in general, appear to have shifted the focus of complaint resolution to the SEA.

We have concluded that the new regulations do not establish a system of complaint resolution procedures best suited to the needs of Title I. They appear to have the effect of making it less likely that complaints can be resolved where they will probably arise: at the local level. Furthermore, other than casting OE in the passive role of receiving complaint resolution reports from SEAs, they are silent about OE's ultimate responsibility to resolve Title I complaints that cannot be resolved satisfactorily at the LEA or the SEA level.

C. Recommendations

We recommend that the Title I regulations be amended to impose specific complaint resolution responsibilities on each level of the Title I administrative structure, i.e., LEAs, SEAs, and OE. The Title I regulations should be amended to require: (1) LEAs to develop written procedures for investigating complaints alleging violations of Title I or GEPA, including procedures for resolving the complaints of parents and other individuals and organizations; (2) SEAs to develop written procedures for (a) reviewing appeals from the final complaint resolution decision of a LEA and (b) if necessary, conducting an independent investigation of the complaint alleging violations of Title I or GEPA; and (3) the Commissioner to develop written procedures for (a) reviewing appeals from the final complaint resolution decision of a SEA and (b), if necessary, conducting an independent investigation of the complaint alleging violations of Title I or GEPA.